

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1822-JLR

DEFENDANTS' MOTION TO FILE
DOCUMENTS UNDER SEAL IN
SUPPORT OF MOTOROLA'S RESPONSE
TO MICROSOFT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

**NOTE ON MOTION CALENDAR:
Friday, July 26, 2013**

I. INTRODUCTION

Pursuant to Western District of Washington Civil Local Rule CR 5(g)(2), Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation (collectively "Motorola") respectfully move this Court for leave to file under seal the following:

1. Defendants' Response to Microsoft's Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim.

2. Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants' Response to Microsoft's Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim.

3. Exhibit N to the Declaration of Andrea Pallios Roberts in Support of Defendants' Response to Microsoft's Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim.

4. Exhibit A to the Declaration of Bradley S. Keller in Support of Defendants' Response to Microsoft's Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim.

5. Defendants' Objections to Exhibits Attached to the Declaration of Christopher Wion in Support of Microsoft's Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim.

II. CERTIFICATION

In accordance with Local Civil Rule 5(g)(3)(A), the undersigned counsel certifies that on July 12, 2013 Shane Cramer (on behalf of Microsoft) and Molly Terwilliger and Andrea Pallios Roberts (on behalf of Motorola) met and conferred, both telephonically and via email, regarding the need and extent to file under seal certain limited portions of Defendants' Response to Microsoft's Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim, and supporting exhibits.

1 III. BACKGROUND

2 Microsoft Corporation (“Microsoft”) and Motorola entered into a stipulated Protective
3 Order, which was approved by the Court on July 21, 2011. (Dkt. No. 72.) This Protective Order
4 outlines categories of material that should be maintained in confidence, along with procedures for
5 sealing confidential material when included in documents filed with the Court. Specifically,
6 paragraph 1 specifies that:

7 Confidential Business Information is information which has not been made public
8 and which concerns or relates to the trade secrets ... amount or source of any
9 income, profits, losses, or expenditures of any person, firm, partnership,
10 corporation, or other organization, the disclosure of which information is likely to
have the effect of causing substantial harm to the competitive position of the
person, firm, partnership, corporation, or other organization from which the
information was obtained....

11 *Id.* at 1-2. This information should be marked as “CONFIDENTIAL BUSINESS
12 INFORMATION, SUBJECT TO PROTECTIVE ORDER.” *Id.* at 2. Additionally, paragraph 6
13 specifies that:

14 (1) Confidential Business Information pertaining to licensing or other
15 commercially sensitive financial information shall not be made available under
16 this paragraph 6 to such designated in-house counsel; the supplier shall designate
17 such Confidential Business Information pertaining to licensing or other
18 commercially sensitive financial information as “[SUPPLIER’S NAME]
CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’
EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and promptly provide a
redacted version of such document that may be disseminated to the two in-house
counsel designated under this paragraph 6....

19 *Id.* at 4. Finally, Paragraph 2 of the Protective Order governs the sealing of documents, and states
20 in relevant part that:

21 During the pre-trial phase of this action, such information, whether submitted in
22 writing or in oral testimony, shall be disclosed only *in camera* before the Court
23 and shall be filed only under seal, pursuant to Rule 5(g) of the Local Civil Rules
of the United States District Court for the Western District of Washington.

24 *Id.* at 2.

25 Thus, the Protective Order provides that Motorola may request to seal documents by
26 formal motion pursuant to Rule 5(g) of the Local Civil Rules of the Western District of
Washington. Local Rule Rule 5(g)(3) states that:

1 (3) A motion to seal a document, even if it is a stipulated motion,
2 must include the following:

3 (A) a certification that the party has met and conferred with all
4 other parties in an attempt to reach agreement on the need to file
5 the document under seal, to minimize the amount of material
6 filed under seal, and to explore redaction and other alternatives
7 to filing under seal; this certification must list the date, manner,
8 and participants of the conference;

9 (B) a specific statement of the applicable legal standard and the
10 reasons for keeping a document under seal, with evidentiary
11 support from declarations where necessary.

12 Where parties have entered a litigation agreement or stipulated
13 protective order (*see* LCR 26(c)(2)) governing the exchange in
14 discovery of documents that a party deems confidential, a party
15 wishing to file a confidential document it obtained from another
16 party in discovery may file a motion to seal but need not satisfy
17 subpart (3)(B) above. Instead, the party who designated the
18 document confidential must satisfy subpart (3)(B) in its response to
19 the motion to seal or in a stipulated motion.

20 Similarly, federal law recognizes that courts should protect trade secrets or other
21 confidential commercial information by reasonable means, permitting the filing under seal of
22 documents containing such information. *See* Fed. R. Civ. P. 26(c)(1)(G) and (H) (stating that a
23 court may require that (1) “a trade secret or other confidential research, development, or
24 commercial information not be revealed or be revealed only in a specified way” and (2) “the
25 parties simultaneously file specified documents or information in sealed envelopes...”).

26 Though courts recognize a general right to inspect and copy public records and documents,
including judicial records, the United States Supreme Court has stated that this right is limited.
“[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory
power over its own records and files, and access has been denied where court files might have
become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
(1978). In discussing examples of improper purposes, the Court indicated that courts are not to
serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

As the Ninth Circuit stated:

The law, however, gives district courts broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information. See Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the district court to issue “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden.” The Supreme Court has interpreted this language as conferring “broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

Phillips v. General Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002).

IV. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES MOTOROLA TO FILE THIS MOTION FOR LEAVE TO SEAL

In accordance with the Protective Order and the above-referenced authority, Motorola moves to file the documents described below under seal.

Defendants’ Response to Microsoft’s Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola’s Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim contains quotes from and summaries of deposition testimony that Microsoft designated as “MICROSOFT CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER.” This document should accordingly be sealed.

Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants’ Response to Microsoft’s Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola’s Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim is excerpts of the deposition of Horacio Gutierrez. Microsoft designated this testimony as “MICROSOFT CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER.” This document should accordingly be sealed.

Exhibit N to the Declaration of Andrea Pallios Roberts in Support of Defendants’ Response to Microsoft’s Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola’s Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative

1 Defenses and Second Counterclaim is excerpts of the deposition of K. McNeill Taylor, Jr.
2 Motorola designated this testimony as “HIGHLY CONFIDENTIAL.” This document should
3 accordingly be sealed.

4 Exhibit A to the Declaration of Bradley S. Keller in Support of Defendants’ Response to
5 Microsoft’s Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment
6 on Motorola’s Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second
7 Counterclaim is the Expert Witness Report of Bradley S. Keller, which bears the designation
8 “Confidential Business Information Pursuant to Protective Order.” It discusses information
9 designated by Microsoft as confidential under the Protective Order. The document should
10 accordingly be sealed.

11 Defendants’ Objections to Exhibits Attached to the Declaration of Christopher Wion in
12 Support of Microsoft’s Motion for Partial Summary Judgment of Breach of Contract and
13 Summary Judgment on Motorola’s Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative
14 Defenses and Second Counterclaim contains references to documents and testimony Motorola
15 designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER.” The document should
16 accordingly be sealed.

17 **V. CONCLUSION**

18 For the foregoing reasons, Motorola respectfully requests that this Court order that the
19 following document be filed under seal:

- 20 1. Defendants’ Response to Microsoft’s Motion for Partial Summary Judgment of
21 Breach of Contract and Summary Judgment on Motorola’s Third, Fourth, Fifth,
22 Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim
- 23 2. Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants’
24 Response to Microsoft’s Motion for Partial Summary Judgment of Breach of
25

Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim

3. Exhibit N to the Declaration of Andrea Pallios Roberts in Support of Defendants' Response to Microsoft's Motion for Partial Summary Judgment of Breach of Contract and Summary Judgment on Motorola's Third, Fourth, Fifth, Seventh, Eighth, and Ninth Affirmative Defenses and Second Counterclaim.
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DATED this 12th day of July, 2013.

Respectfully submitted,

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***Attorneys for Motorola Solutions, Inc.,
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 12th day of July, 2013.

/s/ Marcia A. Ripley

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